

Lender's Agreement Beverage Container Recycling Infrastructure Loan Guarantee Program



The Department of Conservation (Department) is authorized to leverage ten million dollars (\$10,000,000) to guarantee up to forty million dollars (\$40,000,000) in loan guarantees from the Beverage Container Recycling Infrastructure Loan Guarantee Account in the California Beverage Container Recycling Fund. Funds in this revolving account are continuously appropriated to issue capital expenditure loan guarantees for new recycling infrastructure located in the state.

Part A - Contact Information

Lender:	Date of DOC Pre-Approval:
Lender Business Address:	Lender Telephone Number:
Borrower/Project:	Lender Tax Identification Number:

Part B - Conditions of Agreement

I. General Provisions

- A. **Purpose:** The purpose of this Beverage Container Recycling Infrastructure Loan Guarantee Program is to provide loan guarantees for capital expenditures for new recycling infrastructure in California. This new recycling infrastructure shall: (1) add recycling capacity, (2) result in re-manufacturing and re-use of beverage containers into new products, and (3) comply with all applicable laws and regulation. It is not intended that the guarantee authority will be used for marginal or substandard loans, or for relief of Lenders having such loans.

The participating Lender ("Lender") is designated as a Lender for the purpose of processing and requesting Loan Note Guarantees authorized under Public Resources Code (PRC) § 14581(a)(12), and PRC Section 14582, and servicing those loans as authorized herein. The Lender enters into this Agreement as a condition for obtaining the guarantee. It is the responsibility of the Lender to ascertain that all requirements for making, securing, servicing, and collecting the loans are complied with. Copies of all forms referenced in this Agreement and identified in this section, are available from the Division of Recycling, Market Research Branch, (916) 323-5878, or the Department website, www.conservation.ca.gov. The forms associated with this Agreement and Program are as follows:

- (1) Borrower Pre-Application Forms and Directions, DOR-LG-1
- (2) Conditional Commitment for Guarantee, DOR-LG-2
- (3) Lender Final Application Cover Form, DOR-LG-3
- (4) Lender's Agreement (this document), DOR-LG-4
- (5) Loan Note Guarantee, DOR-LG-5

- (6) Assignment Guarantee Agreement, DOR-LG-6
- (7) Lender's Guaranteed Loan Status Report, DOR-LG-7
- (8) Borrower's Annual Status Report, DOR-LG-8
- (9) Guaranteed Loan Borrower Default Status Report, DOR-LG-9
- (10) Guaranteed Loan Report of Loss, DOR-LG-10

The State of California, as acting through the California Department of Conservation, Division of Recycling ("Department"), agrees to enter into a Loan Note Guarantee with the Lender issued pursuant to the requirements specified herein, and to participate in a percentage of any loss on any such loans not to exceed the amount established in the Loan Note Guarantee. The terms of any Loan Note Guarantee are controlling.

B. Definitions: The following definitions apply to this Agreement and associated forms and documents:

Assignment Guarantee Agreement. Form DOR-LG-6, the signed agreement among the Department, the Lender, and a Holder containing the terms and conditions of assignment of a guaranteed portion of a loan.

Borrower. All parties liable for the loan except for guarantors.

Capital expenditures. Expenditures that provide benefits that extend beyond the year in which the expenditure is made, and provide benefits for more than one accounting period. Capital expenditures are credited to the appropriate asset account on the balance sheet, and are depreciated over the useful life of the item. Capital expenditures include buildings and facilities (including both new construction and expansion or conversion of existing facilities), and equipment utilized in creating new recycling infrastructure, as defined below. Capital expenditures do not include costs such as working capital, salaries, benefits, or other operating costs. For purposes of this program, capital expenditures do not include real property or land.

Collateral Value. Referring to an asset, the amount expected to be realized if the Lender took possession after a loan default and sold the asset after conducting a reasonable search for a buyer and after deducting the costs of taking possession, preserving, and marketing the asset, less the value of any existing liens.

Conditional Commitment for Guarantee. Form DOR-LG-2, the Department's notice to the Borrower that the loan guarantee it has requested meets statutory and programmatic requirements and is approved by the Department. The Borrower may apply to an eligible Lender for a loan on the project, and subject to Lender approval, the Department will commit to a loan guarantee for the requested project.

Deficiency balance. The balance remaining on a loan after all collateral has been liquidated.

Deficiency judgment. A monetary judgment rendered by a court of competent jurisdiction after foreclosure and liquidation of all collateral securing the loan.

Department. The California Department of Conservation, assigned to administer this Beverage Container Recycling Infrastructure Loan Guarantee Program. Within the Department, the Division of Recycling, Market Research Branch, has day-to-day administration of the program.

Fair market value. The price that could reasonably be expected for an asset in an arm's-length transaction between a willing buyer and a willing seller under ordinary economic and business conditions.

Holder. A person or entity, other than the Lender, who owns all or part of the guaranteed portion of the loan with no servicing responsibilities. The assignee becomes a holder only when the Department receives notice and the transaction is completed through use of Form DOR-LG-6.

Lender. The organization making, servicing, and collecting the loan, which is guaranteed under provisions of this Agreement.

Lender's Agreement. This Agreement, Form DOR-LG-4, between the Department and the Lender setting forth the Lender's loan responsibilities.

Loan Agreement, Loan Note, Note, or Promissory Note. The agreement between the Borrower and Lender containing the terms and conditions of the loan and the responsibilities of the Borrower and Lender. Evidence of debt. "Note" or "Promissory Note" shall also be construed to include "Bond" or other evidence of debt where appropriate.

Loan Note Guarantee. Form DOR-LG-5, issued and signed by the Department, containing the terms and conditions of the guarantee.

Loan-to-value. The ratio of the dollar amount of a loan to the dollar value of the collateral pledged as security for the loan.

Administration of Loans. All servicing actions shall be the responsibility of the holder who shall follow accepted standards of loan servicing employed by prudent lenders.

Parity. A lien position whereby two or more Lenders share a security interest of equal priority in collateral. In the event of default, each Lender will be affected on a pro rata basis.

Participation. Sale of an interest in a loan by the Lender wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

Pre-paid. Refers to the loan, for purposes of incurring a pre-payment penalty. A loan is considered pre-paid if, in one payment, the Borrower pays an amount greater than twenty-five (25) percent of the remaining loan principal (on the date the pre-payment is made), within any of the first three years of the loan. For example, if the Borrower, in lieu of the regular payment, pays \$25,000 with a \$100,000 loan balance, the Borrower would be subject to a pre-payment penalty (See Section II.K.(5)). If the Borrower paid \$24,000, the Borrower would not be subject to the prepayment penalty.

Program. The Beverage Container Recycling Infrastructure Loan Guarantee Program.

Recycling Infrastructure. The underlying foundation or basic framework necessary to recycle beverage containers in California, including the collection, processing, and use of recycled beverage containers as a feedstock in new products. The loan guarantee program is limited to new recycling infrastructure, that results in additional re-manufacturing or re-use capacity of beverage containers into new products, and to the extent that it directly results in additional re-manufacturing or re-use, additional collecting and processing capacity. Examples of recycling infrastructure include, but are not limited to: (1) new equipment and facilities capable of using beverage container materials to produce new products, (2) converting existing California manufacturing facilities from virgin material to recycled beverage container material feedstock, (3) when directly linked to either (1) or (2) above, new equipment and facilities capable of expanding collection and processing capacity for beverage container materials as part of new re-manufacturing capacity.

State. The State of California.

- C. **Full Faith and Credit:** The guarantee is supported by the full faith and credit of the State of California and is incontestable except under the circumstances of fraud or misrepresentation of which the Lender has actual knowledge at the execution of the guarantee or of which the Lender participates in or condones.

The Loan Note Guarantee shall be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which the Department acquires knowledge of the foregoing. Any losses shall be unenforceable by the Lender to the extent that loan funds are used for purposes other than those specifically approved by the Department in its Conditional Commitment for Guarantee, Form DOR-LG-2.

- D. **Eligible Lenders:** An eligible Lender is any Federal or State chartered bank with direct lending authority, Bank for Cooperatives, Savings and Loan Association, or mortgage company that is part of a bank-holding company that is certified by either the United States Small Business Administration (SBA) in the Preferred Lender Program

(PLP), or certified by the United States Department of Agriculture (USDA) in the Certified Lender Program (CLP). A financial institution licensed in California to transact business as a business and industrial development corporation pursuant to Financial Code, Division 15, Section 31000, et seq. These entities shall be subject to credit examination and supervision by either an agency of the United States or of California. Eligible Lenders may also include credit unions provided, they are subject to credit examination and supervision by either the National Credit Union Administration or a State agency, and insurance companies provided they are regulated by a State or National insurance regulatory agency, provided they have PLP or CLP status. Loan guarantees will only be approved for Lenders with adequate experience and expertise to make, secure, service, and collect Program loans.

- E. Guarantee Amounts: The portion of the loan being guaranteed is based on the amount of the loan and the final loss. For loans equal to, or less, than \$150,000, the loan guarantee is eighty-five (85) percent of the total loss, up to 85 percent of the loan value. For loans above \$150,000 in value, the loan guarantee is seventy-five (75) percent of the total loss, up to 75 percent of the loan value. Up to the specified amount, the loan guarantee covers principal, interest, and approved liquidation fees and expenses.
- F. Exception Authority: The Department Director may, in individual cases, grant an exception to any requirement or provision of this Agreement which is not inconsistent with any applicable law if the Director determines that application of the requirement or provision would adversely affect the Department's interest.
- G. Disputes and Appeals: In the event of a dispute, the disputing party may, in addition to any other remedies that may be available, provide written notice of the particulars of such dispute to the Assistant Director for Recycling, Department of Conservation, 801 K Street, MS 19-01, Sacramento, California 95814-3533. Within fifteen (15) working days of receipt of such notice, the Assistant Director shall advise the party of his or her findings and a recommended means of resolving the dispute. Only the Borrower, Lender, or Holder can appeal a Department decision made under this program. In cases where the Department has denied or reduced the amount of final loss payment to the Lender, the adverse decision may be appealed by the Lender only. An adverse decision that only impacts the Holder may be appealed by the Holder only. A decision by a Lender adverse to the interest of the Borrower is not a decision by the Department, whether or not concurred with by the Department.
- H. General Terms and Conditions: The general terms and conditions, available at <http://www.documents.dgs.ca.gov/ols/GTC-307.doc>, are incorporated herein by reference, with the exception of Item 13, Compensation. For the purposes of this agreement the Lender shall be considered the "Contractor" as that term appears in the General Terms and Conditions document.

II. Loan Origination

- A. Eligible Borrowers: A Borrower may be a cooperative, corporation, partnership, or other legal entity organized and operated on a profit or nonprofit basis; an Indian tribe on a Federal or State reservation or other Federally recognized tribal group; a public body; or an individual. A Borrower shall be engaged in or proposing to engage in a business.
- B. Eligible Loan Purposes: PRC § 14582 specifies that the loan guarantee program is to issue loan guarantees for capital expenditures for new recycling infrastructure located in the state. Loan guarantees under this program shall:
 - (1) Fund a capital expenditure project, as defined in Section I.B. of this Agreement.
 - (2) Fund new recycling infrastructure in California, as defined in Section I.B. of this Agreement.
 - (3) Loan proceeds shall be directed toward facilities in California, and new recycling infrastructure shall be physically located within California. However, an applicant need not be headquartered within California if the above conditions are met. Loan proceeds can be used for equipment costs, buildings and facilities, rent and utilities, travel, contractual services, salaries and benefits, other operating and non operating costs (explained).

(4) Section 14582 of the PRC further requires the Department to determine, prior to issuing a loan guarantee, that the project satisfy the following three requirements:

(a) *Adds recycling capacity*, defined as additional capability to collect, process, or utilize recycled beverage containers to facilitate the use of recycled beverage containers in the manufacture of recycled-content products. To be eligible for a loan guarantee, new recycling capacity shall directly result in new re-manufacturing or re-use of California beverage containers.

(b) *Results in re-manufacturing or re-use of beverage containers into new products*, defined as the use of recycled beverage containers as a feedstock in the manufacturing of new products, or the re-use of recycled beverage containers for the production of new, recycled-content, beverage containers.

(c) *Complies with all applicable laws and regulations*. The Borrower shall be in compliance with all federal, state, and local laws and regulations, including environmental, health and safety, and other regulations that are applicable to the business and/or the project. Before finalizing a loan guarantee, the Borrower shall satisfy the Department and the Lender that the borrower is taking the steps that are required to obtain all the necessary permits, comply with the California Environmental Quality Act (CEQA), and meet all regulatory requirements necessary for the project to proceed.

C. Pre-Application Process: Depending on the availability of funds in the Recycling Infrastructure Loan Guarantee Account, the Department pre-application period will be continuous for the loan guarantee program. The pre-application procedure will require the following:

(1) The Borrower shall complete and submit the Pre-Application and Pre-Approval Forms and Instructions, Form DOR-LG-1, to the Department.

(2) The Department will review and evaluate each of the pre-applications for response to the requirements, technical merit, and compatibility with statutory and programmatic requirements. Evaluation criteria are specifically defined in Form DOR-LG-1.

(3) Within twenty-five (25) working days of the pre-application date, the Department will notify applicants whether their projects were accepted or rejected. For approved projects, the Department will provide the Borrower a Conditional Commitment for Guarantee, Form DOR-LG-2, to certify that, if an eligible Lender provides a loan for the proposed project, the Department will issue a loan guarantee, subject to Department's final review of the loan.

(4) Upon receipt of the Conditional Commitment for Guarantee, the Borrower and Lender shall proceed with securing the loan. The Borrower shall provide the Conditional Commitment for Guarantee and pre-application materials to the Lender, in addition to such loan application materials, as the Lender requires.

- D. Lender Application Forms: The Lender shall use their own standard commercial loan application procedures and forms in order to evaluate the Borrower and proposed project. The Borrower shall follow all loan application procedures, as specified by the Lender.
- E. Lender Review Procedure: The Lender shall evaluate the project on its financial merits following standard commercial loan-making criteria, including, but not limited to, the items addressed in Section II.F. of this Agreement, and make a determination whether to provide a loan to the Borrower for the proposed project. If the loan is approved, the Lender shall submit the required forms to the Department (identified in Item N of this section) within forty (40) working days of the date of approval of the Conditional Commitment for Guarantee.
- F. Credit Quality: The Lender shall analyze all credit factors associated with each proposed loan and apply its professional judgment to determine that the credit factors, considered in combination, ensure loan repayment. The Lender shall have an adequate underwriting process to ensure that loans are reviewed by other than the originating officer. There shall be good credit documentation procedures. The Lender is responsible for determining credit quality and shall address all of the elements of credit quality in a written credit analysis including adequacy of equity, cash flow, collateral, history, management, and the current status of the industry for which credit is to be extended.
- (1) Cash Flow: All efforts shall be made to structure or restructure debt so that the business has adequate debt coverage and the ability to accommodate expansion. The Borrower shall demonstrate repayment ability. The Lender shall not approve loan guarantee requests that do not show repayment ability based on historical operation and realistic projections of future earnings.
- (2) Collateral:
- (a) Collateral shall have documented value sufficient to protect interest of the Lender and the Department and the discounted collateral value, as defined in Section I.B. of this Agreement, shall be at least equal to the loan amount. Lender shall discount collateral consistent with sound loan-to-value policy.
- (b) The Lender shall ensure that all worthwhile collateral is pledged to the project, and evaluate the quality of the collateral, including lien position, marketability of the collateral, the degree to which the collateral is highly specialized or single purpose, and the age and condition of the collateral.
- (c) Appraisals: Lender shall be responsible for ensuring that appraisal values adequately reflect the actual value of the collateral. All real property appraisals associated with Department guaranteed loan-making and servicing transactions shall comply with all applicable State laws and regulations and meet the requirements contained in the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989 and the appropriate guidelines contained in Standards 1 and 2 of the Uniform Standards of Professional Appraisal Practices (USPAP). All appraisals shall include consideration of the potential environmental hazards on the market value of the collateral. Chattels shall be evaluated in accordance with normal banking practices and generally accepted methods of determining value.
- (d) Personal and corporate guarantees: Personal and corporate guarantees, when obtained, are part of the collateral for the loan. However, the value of such guarantee is not considered in determining whether a loan is adequately secured for loanmaking purposes.
- (i) Personal and corporate guarantees for those owning greater than twenty (20) percent of the Borrower shall be required where legally permissible, except as provided for in this section. Guarantees of parent, subsidiaries, or affiliated companies and secured guarantees may also be required.
- (ii) Exceptions to the requirements for personal guarantees shall be requested by the Lender and concurred in by the Department on a case-by-case basis. The Lender shall document that collateral, equity, cash flow, and profitability indicate an above average ability to repay the loan.
- (3) Industry: Current status of the industry shall be considered and businesses in areas of decline shall be required to provide strong business plans which outline how they differ from current trends. The

regulatory environment surrounding the particular business or industry shall be considered. In addition, the Lender shall evaluate the technical feasibility of the project.

(4) **Loan Contribution:** A minimum of fifteen (15) percent equity (cash) contribution toward the project by the Borrower shall be required. In-kind contributions shall not be counted toward the fifteen percent minimum. The Lender may increase the minimum required loan contribution based on specific project characteristics.

(5) **Lien Priorities:** The entire loan shall be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan shall neither be paid first nor given any preference or priority over the guaranteed portion. A parity or junior position may be considered provided that discounted collateral values are adequate to secure the loan in accordance with paragraph (b) of this section after considering priority liens.

(6) **Management.** The Lender shall complete a thorough review of key management personnel to ensure that the business has adequately trained and experienced managers.

G. **Loan Funds Utilized for Authorized Purposes:** The Lender shall ensure that loan funds shall be used for the purposes authorized in PRC SEC 18. Section 14582 in accordance with the terms of Form DOR-LG-2, "Conditional Commitment for Guarantee."

H. **Lender Certifications:** By signing this Agreement, the Lender certifies the following:

(1) None of the Lender's officers or directors, stockholders, or other owners has a substantial financial interest in the Borrower. None of the Borrower's officers or directors, stockholders, or other owners has a substantial interest in the Lender.

(2) There has been neither any material adverse change in the Borrower's financial condition, nor any other material adverse change in the Borrower, for any reason, during the period of time from the Department's issuance of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee regardless of the cause or causes of the change and whether the change or causes of the change were within the Lender's or Borrower's control. The Lender's certification shall address all adverse changes to the Borrower, any parent, affiliate, or subsidiary of the Borrower, and guarantors.

(3) A loan agreement or loan instrument concurred in by the Department has been or will be signed by the Borrower.

I. **Borrower Insurance Requirements:** The Lender shall require the Borrower to obtain hazard insurance, worker's compensation insurance, and other insurance consistent with State law and standard commercial loan-making criteria.

(1) Hazard insurance with a standard mortgage clause naming the Lender as beneficiary shall be required on every loan in an amount that is at least the lesser of the depreciated replacement value of the collateral or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, and builder's risk during construction by the business, and property damage.

(2) Life: The Lender may require life insurance to insure against the risk of death of persons critical to the success of the business. When required, coverage shall be in amounts necessary to provide for management succession or to protect the business. The cost of insurance and its effect on the Borrower's working capital shall be considered as well as the amount of existing insurance which could be assigned without requiring additional expense.

(3) Worker compensation: Worker compensation insurance shall be required in accordance with State law.

(4) Other: Public liability, business interruption, flood, malpractice, and other insurance appropriate to the Borrower's particular business and circumstances shall be considered and required when needed to protect interests of the Borrower.

- J. Interest Rates: The interest rate for the guaranteed loan shall be negotiated between the Lender and the Borrower and may be either fixed or variable as long as it is a legal rate. Interest rates shall not be more than those rates customarily charged Borrowers in similar circumstances in the ordinary course of business and are subject to Department review and approval. The Lender is encouraged to utilize the secondary market and pass interest rate savings on to the Borrower.
- K. Loan Terms:
- (1) The maximum repayment for loans shall not exceed fifteen (15) years or, for machinery and equipment, the useful life of the machinery and equipment purchased with loan funds, whichever is less.
 - (2) The first installment of principal and interest shall, if possible, be scheduled for payment after the project is operational and has begun to generate income. However, the first full installment shall be due and payable within three (3) years from the date of the Promissory Note and be paid at least annually thereafter. Interest-only payments shall be paid at least annually from the date of the note. Monthly payments shall normally be expected.
 - (3) Only loans which require a periodic payment schedule which will retire the debt over the term of the loan without a balloon payment shall be guaranteed.
 - (4) A loan's maturity shall take into consideration the use of proceeds, the useful life of the assets being financed, and the Borrower's ability to repay the loan. The Lender shall apply the maximum guidelines specified above only when the loan cannot be repaid over a shorter term.
 - (5) Loans pre-paid by the Borrower within the first year may be assessed a fee of five (5) percent of the pre-payment amount. Loans pre-paid within the second year may be assessed a fee of three (3) percent of the pre-payment amount, and loans pre-paid within the third year may be assessed a fee of one (1) percent of the pre-payment amount. The pre-payment penalty shall be paid by the Borrower to the Lender, and shall be shared between the Lender and Holder(s) based on the pro rata share of the guaranteed loan held.
 - (6) All loans guaranteed through the Beverage Container Recycling Infrastructure Loan Guarantee Program shall be sound, with reasonably assured repayment.
- L. Financial Statements: The Lender shall determine the type and frequency of submission of financial statements by the Borrower.
- M. Fees and Charges: The Lender may establish charges and fees for the loan provided they are similar to those normally charged other applicants for the same type of loan in the ordinary course of business.
- N. Submission of Signed Forms to the Department: Upon Lender's approval of the loan, the Lender shall complete and submit a signed original and one copy of each of: Form DOR-LG-3, the Lender Final Application Cover Form, Form DOR-LG-4, the Lender's Agreement, and the Loan Note Agreement between the Lender and Borrower. The Lender's Loan Note Agreement, Promissory Note, or "Note", shall use the Lender's standard format, and be consistent with standard commercial loan-making criteria, however, it shall include, at a minimum:
- (1) Prohibition against assuming liabilities or obligations of others
 - (2) Restriction on dividend payments
 - (3) Limitation on the purchase or sale of equipment and fixed assets

- (4) Limitation on compensation of officers and owners
- (5) Minimum working capital or current ratio requirement
- (6) Maximum debt-to-net worth ratio
- (7) Restrictions concerning consolidations, mergers, or other circumstances
- (8) Limitations on selling the business without the concurrence of the Lender
- (9) Repayment and amortization of the loan.
- (10) List of collateral and lien priority for the loan including a list of persons and corporations guaranteeing the loan with a schedule for providing the Lender with personal and corporate financial statements. Financial statements on the corporate and personal guarantors shall be updated at least annually.
- (11) Type and frequency of financial statements to be required for the duration of the loan.
- (12) Any additional requirements imposed by the Department in its Conditional Commitment for Guarantee.

III. Final Loan Approval and Processing

- A. Department Final Review: The Department has final approval authority for the Loan Note Guarantee. Upon receipt of the appropriate completed and signed forms, as specified in Section II.N. of this Agreement, the Department will have twenty (20) working days to either issue the loan guarantee or reject the loan guarantee.
 - (1) The Department will make the final decision based primarily on a review of the credit analysis submitted by the Lender as part of Forms DOR-LG-3, and a review of the provisions within the Loan Note between the Borrower and Lender to ensure that the final terms of the loan are compatible with Program requirements.
 - (2) Upon final approval of the Lender Final Application Cover Form, DOR-LG-3, and Lender's Agreement, Form DOR-LG-4, by the Department, the Department will sign and return one copy of each of these forms to the Lender. The Department will prepare, sign, and submit to the Lender a Loan Note Guarantee, Form DOR-LG-5. This action will signify the issuance of a guarantee by the Department.
 - (3) If the Department does not approve the Lender Final Application Cover Form, DOR-LG-3, and Lender's Agreement, Form DOR-LG-4, the Department, in a letter to the Borrower and Lender, will identify the reason(s) for the rejection. The Department may be available to meet with the Borrower and Lender to address the identified problems and assist the Borrower and Lender in making appropriate changes. If the problems cannot be addressed to the satisfaction of the Department, the loan guarantee will not be approved, and the Department will issue a final rejection letter.
- B. Expertise: Loan guarantees will only be approved when the Lender demonstrates adequate experience and expertise to make, secure, service, and collect Beverage Container Recycling Infrastructure loans.
- C. Closing and Disbursement of Loan: The Lender shall conduct loan closings and shall make loan disbursements as described in Section IV.A.(5) of this Agreement and the terms and conditions of the Loan Note Guarantee Agreement. Upon closing, the lender shall provide the Department with copies of all loan forms and documentation.

IV. Lender's Functions and Responsibilities

- A. Lender Pre-Servicing Responsibilities: The Lender has the primary responsibility for the successful delivery of the Beverage Container Recycling Infrastructure Loan Guarantee Program. The Lender is responsible for:
- (1) Processing Borrower Application and completing Pre-approval Form, and processing applications for guaranteed loans after the Department has approved the Borrower's pre-application;
 - (2) Developing and maintaining adequately documented loan files;
 - (3) Recommending only loan proposals that are eligible and financially feasible;
 - (4) Obtaining valid evidence of debt and collateral in accordance with sound lending practices;
 - (5) Distributing loan funds: Distribution of loan funds will follow standard commercial lending criteria. Lenders shall be encouraged to distribute funds in a phased approach, and to ensure that benchmark criteria identified for each phase are achieved prior to disbursing funds for the following phase. The Lender shall notify the Department, using Form DOR-LG-7, Lender's Guaranteed Loan Status Report, within fifteen (15) working days after completion of each loan disbursement phase;
 - (6) Following Department regulations;
 - (7) Making loan documents available to the Department upon request; and
 - (8) Being familiar with State and Federal environmental requirements; to consider, in consultation with the prospective Borrower, the potential environmental impacts of their proposals at the earliest planning stages; and to develop proposals that minimize the potential to adversely impact the environment. Immediately upon discovery, the Lender shall alert the Department to any controversial environmental issues related to the proposed project or items that may require extensive environmental review..
- B. Routine Servicing: Lender shall be responsible for servicing the entire loan and for taking all servicing actions that a prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The Loan Note Guarantee, Form DOR-LG-5, is unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, use of loan funds for unauthorized purposes, negligent servicing, or failure to obtain the required security interest regardless of the time at which the Department acquires knowledge of the foregoing. Lender shall remain mortgagee and secured party of record, notwithstanding the fact that another may hold a portion of the loan. Lender may charge Holder a servicing fee. Lender's servicing responsibilities include, but are not limited to the following:
- (1) See that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures, and that periodic inspections during construction are made.
 - (2) Obtain compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notify in writing the Department and Borrower of any violations using form DOR-LG-9, Guaranteed Loan Borrower Default Status Report. None of the aforesaid instruments shall be altered without the Department's prior written concurrence. Lender shall service the loan in a reasonable and prudent manner.
 - (3) Receive all payments on principal and interest on the loan as they fall due and promptly remitting and accounting to any Holder of its *pro rata* share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized, renewed, or rescheduled only with agreement of the Lender and Holder of the guaranteed portion of the loan and only with the Department's written concurrence.
 - (4) Inspect the collateral as often as necessary to properly service the loan.

(5) Assure that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of Lender as the mortgagee or secured party.

(6) Assure that: taxes, assessment or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation; insurance loss payments, condemnation awards, or similar proceeds are applied to debts in accordance with lien priorities on which the guarantee was based; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture, or fixtures, may be used to acquire property of similar nature and at least equal value for which the Lender shall obtain a lien position equal or superior to the position previously held; the Borrower complies with all laws and ordinances applicable to the loan, the collateral, and operation of the business.

(7) Assure that if personal or corporate guarantees are part of the collateral, current financial statements from such loan guarantors shall be obtained as required by the Loan Agreement. In the case of guarantees secured by collateral, assure the security is properly maintained.

(8) Obtain the lien coverage and lien priorities specified by the Lender and agreed to by the Department, properly record or file lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by the Department.

(9) Assure that the Borrower obtains marketable title to the collateral.

(10) Assure that any party liable is not released from liability for all or any part of the loan, except in accordance with this Agreement.

(11) Provide the Department with Lender's Guaranteed Loan Status Report, Form DOR-LG-7, annually each calendar year, by February 28 of the following calendar year, within fifteen (15) working days of each loan disbursement, and within fifteen (15) working days of the final loan pay-off, and Guaranteed Loan Borrower Default Status Report, Form DOR-LG-9 at least bimonthly when the Borrower is not in compliance with the terms and conditions of the Loan Note Guarantee.

(12) Obtain from the Borrower periodic financial statements as required in the Loan Agreement with the Borrower.

(13) Ensure that the Borrower complies with the measures identified in the environmental impact analysis for this facility for the purpose of avoiding or reducing adverse environmental impacts of the facility's construction or operation.

(14) Within 90 calendar days of receipt of the Loan Note Guarantee, the Lender shall notify the Department of the loan's classification or rating under its regulatory standards. Should the classification be changed at a future time, the Department shall be notified immediately.

(15) Provide loan documentation to the Department, as requested, and meet with the Department, at the Department's request, to ascertain how the guaranteed loan is being serviced and that the conditions and covenants of the Loan Agreement are being enforced.

C. Interest Rate Adjustments: 1) Reductions: The Borrower, Lender, and Holder (if any) may collectively initiate a permanent or temporary reduction in the interest rate of the guaranteed loan at any time during the life of the loan upon written agreement among these parties.

(2) Increases: No increases in interest rates shall be permitted except the normal fluctuations in approved variable interest rates unless a temporary interest-rate reduction occurred.

D. Release of Collateral: All releases of collateral shall be conducted in accordance with standard commercial loan-making criteria. Adequate collateral sufficient to protect the interest of the Lender and Department shall be maintained.

(1) All releases of collateral with a value exceeding \$100,000 shall be supported by a current appraisal on the collateral released. The appraisal shall be at the expense of the Borrower and shall meet the

requirements of Section II.F.(2)(c) of this Agreement. The remaining collateral shall be sufficient to provide for repayment of the Department's guaranteed loan. The Department may, at its discretion, require an appraisal of the remaining collateral in cases where it is determined that the Department may be adversely affected by the release of collateral. Sale or release of collateral shall be based on an arm's-length transaction.

(2) Within the parameters of paragraph (1) of this section, Lenders may, over the life of the loan, release collateral (other than personal and corporate guarantees) with a cumulative value of up to twenty (20) percent of the original loan amount without Department concurrence if the proceeds generated are used to reduce the guaranteed loan or to buy replacement collateral.

(3) Within the parameters of paragraph (1) of this section, release of collateral with a cumulative value in excess of twenty (20) percent of the original loan or when the proceeds shall not be used to reduce the guaranteed loan or to buy replacement collateral must be requested in writing by the Lender and concurred in by the Department in writing in advance of the release. A written evaluation shall be completed by the Lender to justify the release.

- E. Subordination of Lien Position: A subordination of the Lender's lien position must be requested in writing by the Lender and concurred in by the Department in writing in advance of the subordination. The subordination shall enhance the Borrower's business, and the Department's interest. After the subordination, collateral shall be adequate to secure the loan. The lien to which the guaranteed loan is subordinated shall be for a fixed dollar limit and fixed or limited term, after which the guaranteed loan lien priority shall be restored. Subordination to a revolving line of credit shall not exceed one (1) year. There shall be adequate consideration for the subordination.
- F. Alterations to Loan Instruments: The Lender shall neither alter nor approve any alterations of any loan instrument without the prior written approval of the Department.
- G. Transfer and Assumption: The Department will handle a transfer and assumption as a new loan. The Lender, Borrower, and Transferee shall comply with all requirements specified in this Agreement and all associated forms and documents. The Lender shall provide the Department a written certification that the transfer and assumption is valid, enforceable, and complies with all State requirements and this Agreement.
- H. Substitution of Lender: After the issuance of a Loan Note Guarantee, the Lender shall not sell or transfer the entire loan without the prior written approval of the Department. The Department will not pay any loss or share in any costs (i.e., appraisal fees, environmental studies, or other costs associated with servicing or liquidating the loan) with a new Lender unless a relationship is established through a substitution of Lender in accordance with paragraph (1) of this section. This includes cases where the Lender has failed and been taken over by a regulatory agency such as the Federal Deposit Insurance Corporation (FDIC) and the loan is subsequently sold to another Lender.

(1) The Department may approve the substitution of a new Lender if:

(a) The proposed substitute Lender:

(i) Is an eligible Lender in accordance with Section I.D. of this Agreement;

(ii) Commits to service the loan in accordance with the original loan documents and this Agreement; and

(iii) Agrees in writing to acquire title to the unguaranteed portion of the loan held by the original Lender and assumes all original loan requirements, including liabilities and servicing responsibilities.

(b) The substitution of the Lender is requested in writing by the Borrower, the proposed substitute Lender, and the original Lender if still in existence.

(2) Where the Lender has failed and been taken over by the FDIC and the guaranteed loan is liquidated by the FDIC rather than being sold to another Lender, the Department will pay losses and share in costs as if the FDIC were an approved substitute Lender.

V. Lender's Sale or Assignment of Loan

- A. Description: The Lender may sell all or part of the guaranteed portion of the loan on the secondary market or retain the entire loan. The Lender shall not sell or participate in any amount of the guaranteed or unguaranteed portion of the loan to the Borrower or members of the Borrower's immediate families, officers, directors, stockholders, other owners, or a parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan shall not be in default. The Lender may proceed under options C. or D. of this section.
- B. Rights of Holder: When a guaranteed portion of a loan is sold by the Lender to a Holder, the Holder shall thereupon succeed to all rights of Lender under the Loan Note Guarantee to the extent of the portion of the loan purchased. Lender shall remain bound to all the obligations under the Loan Note Guarantee, and this Agreement, and to future Department program regulations not inconsistent with the provisions hereof.
- C. Single-Holder: The entire loan is evidenced by one note, and one Loan Note Guarantee is issued. The Lender may assign all or part of the guaranteed portion of the loan to one or more Holders by using the notice to the Department's Assignment Guarantee Agreement, Form DOR-LG-6. The Holder, upon written notice to the Lender and Department, may reassign the unpaid guaranteed portion of the loan sold under the Assignment Guarantee Agreement. Upon notification and completion of the assignment through the use of Form DOR-LG-6, the assignee shall succeed to all rights and obligations of the Holder.
- D. Multiple Holder: Under this option the loan is evidenced by one note, and one Loan Note Guarantee. The Lender shall provide no more than ten (10) Assignment Guarantee Agreements, Form DOR-LG-6, for the guaranteed portion of the loan. When this option is selected by the Lender, each Holder shall receive a copy of the Borrower's executed note and the Loan Note Guarantee, in addition to the Assignment Guarantee Agreement for their portion of the guaranteed loan. All rights under the security instruments (including personal and corporate guarantees) shall remain with the Lender and in all cases inure to its and the Department's benefit notwithstanding any contrary provision of law.
- E. Sale by Holder: The Holder, upon written notification to the Lender may resell the unpaid guaranteed portion of the loan sold under Section V.C. or V.D. of this Agreement.
- F. Participations: The Lender may obtain participation in its loan under its normal operating procedures. Participation means a sale of an interest by the Lender in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.
- G. Minimal Retention: The Lender is required to hold in its own portfolio the entire unguaranteed portion of the loan.
- H. Repurchase from Holder:

(1) Repurchase by Lender Upon Holder's Request: A Lender shall repurchase the unpaid guaranteed portion of the loan from a Holder within thirty (30) days of written demand by the Holder when the Borrower is in default not less than sixty (60) days on principal or interest due on the loan or the Lender has failed to remit to the Holder its pro rata share of any payment made by the Borrower within thirty (30) days of the Lender's receipt thereof. The repurchase by the Lender shall be for an amount equal to the guaranteed portion of principal and accrued interest less the Lender's servicing fee. The Holder shall concurrently send a copy of the demand letter to the Department. The guarantee shall not cover the note interest to the Holder on the guaranteed loan accruing after ninety (90) days from the date of the demand letter to the Lender requesting the repurchase. The Lender shall accept an assignment without recourse from the Holder upon repurchase.

(2) Repurchase for servicing: The Lender is encouraged to repurchase the loan to facilitate the accounting of funds, resolve the problem, and prevent default, where and when reasonable. If, in the opinion of the Lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the Holder shall sell the guaranteed portion of the loan to the Lender for an amount equal to the unpaid principal and interest on such portion less the Lender's servicing fee. The guarantee shall not cover the note interest to the Holder on the guaranteed loan accruing after ninety (90) days from the date of the demand letter of the Lender or the Department to the Holder requesting the Holder to tender its guaranteed portion. The Lender shall not repurchase from the Holder for arbitrage or other purposes to further its own financial gain.

VI. Default

- A. Notification Requirements: The Lender shall notify the Department when a Borrower is sixty (60) days past due on a payment or if the Borrower is otherwise in default. The Lender shall notify the Department of the status of a Borrower's default on Form DOR-LG-9, Guaranteed Loan Borrower Default Status Report. The Lender shall continue to submit this form bimonthly until such time as the loan is no longer in default. If a monetary default exceeds sixty (60) days, the Lender shall arrange a meeting with the Department and the Borrower to resolve the problem.
- B. Actions Taken by Lender to Prevent Default: In the event a deferment, rescheduling, reamortization, or moratorium is accomplished, it shall be limited to the remaining life of the collateral or remaining limits as contained in the Loan Note Guarantee, whichever is less. Actions that the Lender may take with written concurrence of the Department to provide a permanent cure without adversely affecting the risk to the Department and the Lender include but are not limited to the following:
- (1) Deferment of principal payments (subject to the rights of any Holder).
 - (2) An additional unguaranteed temporary loan by the Lender to bring the account current.
 - (3) Reamortization of or rescheduling payments on the loan (subject to the rights of any Holder).
 - (4) Transfer and assumption of the loan in accordance with the applicable Section IV.G. of this Agreement.
 - (5) Reorganization.
 - (6) Liquidation.
 - (7) Subsequent loan guarantees.
 - (8) Changes in interest rates with the Department's, the Lender's, and the Holder's approval, provided that the interest rate is adjusted proportionately between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.
- C. Protective Advances: Protective advances are advances made by the Lender for the purpose of preserving and protecting the collateral where the debtor has failed to, will not, or cannot meet its obligations. Sound judgment shall be exercised in determining that the protective advance preserves collateral and recovery is actually enhanced by making the advance. Protective advances shall not be made in lieu of additional loans.
- (1) The maximum loss to be paid by the Department will never exceed the guaranteed portion of the original principal regardless of any protective advances made.
 - (2) Protective advances and interest thereon at the note rate will be guaranteed at the same percentage of loss as provided in the Loan Note Guarantee.
 - (3) Protective advances shall constitute an indebtedness of the Borrower to the Lender and be secured by the security instruments. Department written authorization is required before cumulative protective advances may exceed \$5,000.

VII. Liquidation

- A. Decision to Liquidate: If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time liquidation may be considered. If the Lender concludes that liquidation is necessary, it shall request the Department's concurrence. When the Department concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender. The decision to liquidate shall be made when it is determined that the default cannot be cured through actions contained in Section VI.B. of this Agreement or it has been determined that it is in the best interest of the Department and the Lender to liquidate. The decision to liquidate or continue with the Borrower shall be made as soon as possible when any of the following exist:
- (1) A loan has been delinquent ninety (90) days and the Lender and Borrower have not been able to cure the delinquency through one of the actions contained in Section VI.B. of this Agreement.
 - (2) It is determined that delaying liquidation will jeopardize full recovery on the loan.
 - (3) The Borrower has been uncooperative in resolving the problem and the Department or Lender has reason to believe that Borrower is not acting in good faith, and it would enhance the position of the guarantee to liquidate immediately.
- B. Repurchase from Holder: When the decision to liquidate is made, if the loan has not already been repurchased, provisions shall be made to repurchase in accordance with Section V.H. of this Agreement. The Holder shall be paid according to provisions of the Assignment Guarantee Agreement.
- C. Liquidation responsibility: The Lender shall be responsible for liquidation of the loan.
- D. Submission of liquidation plan: The Lender shall, within thirty (30) days after a decision to liquidate, submit to the Department in writing its proposed detailed method of liquidation. Upon approval by the Department of the liquidation plan, the Lender shall commence liquidation.
- E. Lender's liquidation plan: The liquidation plan shall include, but is not limited to, the following:
- (1) Such proof as the Department requires to establish the Lender's ownership of the guaranteed loan promissory note and related security instruments and a copy of the payment ledger if available which reflects the current loan balance and accrued interest to date and the method of computing the interest.
 - (2) Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, and advice as to whether or not each item is serving as collateral for the guaranteed loan.
 - (3) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including recommended action:
 - (a) For acquiring and disposing of all collateral; and
 - (b) To collect from guarantors.
 - (4) Necessary steps for preservation of the collateral.
 - (5) Copies of the Borrower's latest available financial statements.
 - (6) Copies of the guarantor's latest available financial statements.
 - (7) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense.

- (8) A schedule to periodically report to the Department on the progress of liquidation.
- (9) Estimated protective advance amounts with justification.
- (10) Proposed protective bid amounts on collateral to be sold at auction and a breakdown to show how the amounts were determined.
- (11) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt.
- (12) Legal opinions, if needed.
- (13) If the outstanding balance of principal and accrued interest is less than \$200,000, the Lender shall obtain an estimate of fair market and potential liquidation value of the collateral. If the outstanding balance of principal and accrued interest is \$200,000 or more, the Lender shall obtain an independent appraisal report meeting the requirements of Section II.F.(2)(c) of this Agreement on all collateral securing the loan which shall reflect the fair market value and potential liquidation value. In order to formulate a liquidation plan which maximizes recovery, collateral shall be evaluated for the release of hazardous substances, petroleum products, or other environmental hazardous which may adversely impact the market value of the collateral. The appraisal shall consider this aspect. The independent appraiser's fee, including the cost of the environmental site assessment, shall be shared equally by the Department and the Lender.

- F. Approval of liquidation plan: The Department will inform the Lender in writing whether it concurs in the Lender's liquidation plan within fifteen (15) working days after receipt of the liquidation plan from the Lender. Should the Department and the Lender not agree on the Lender's liquidation plan, negotiations will take place between the Department and the Lender to resolve the disagreement. The Lender shall conduct the liquidation. The liquidation plan may be modified when conditions warrant. All modifications must be approved in writing by the Department prior to implementation.
- G. Acceleration: The Lender shall proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document shall be sent to the Department by the Lender. The guaranteed loan shall be considered in liquidation once the loan has been accelerated and a demand for payment has been made upon the Borrower.
- H. Liquidation Accounting and Reports: The Lender shall account for funds during the period of liquidation and shall provide the Department with reports at least quarterly on the progress of liquidation including disposition of collateral, resulting costs, and additional procedures necessary for successful completion of the liquidation.
- I. Abandonment of collateral: There may be instances when the cost of liquidation would exceed the potential recovery value of the collection. The Lender, with proper documentation and concurrence of the Department, shall abandon the collateral in lieu of liquidation. Examples where abandonment may be considered include, but are not limited to:
 - (1) The cost of liquidation is increased or the value of the collateral is decreased by environmental issues.
 - (2) The collateral is functionally or economically obsolete.
 - (3) There are superior liens held by other parties in excess of the value of the collateral.
 - (4) The collateral has deteriorated.
 - (5) The collateral is specialized and there is little or no demand for it.

- J. Disposition of personal or corporate guarantees: The Lender shall take action to maximize the recovery from all collateral, including personal and corporate guarantees. The Lender shall seek a deficiency judgment when there is a reasonable chance of future collection of the judgment.
- K. Compromise Settlement: A compromise settlement may be considered at any time.
- (1) The Lender and the Department shall receive complete financial information on all parties obligated for the loan and shall be satisfied that the statements reflect the true and correct financial position of the debtor including all assets. Adequate consideration shall be received before a release from liability is issued. Adequate consideration includes money, additional security, or other benefit to the goals and objectives of the Department.
- 2) Once the Department and the Lender agree on a reasonable amount that is fair and adequate, the Lender may proceed to effect the settlement compromise.
- (3) A compromise will only be accepted if it is in the best interest of the Department.
- L. Determination of Loss and Payment: In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated, unless otherwise designated as a future recovery or after settlement and compromise of all parties has been completed. The Department will have the right to recover losses paid under the guarantee from any party liable.
- (1) Within thirty (30) calendar days after liquidation of the collateral is completed, Form DOR-LG-10, Guaranteed Loan Report of Loss, shall be prepared and submitted by the Lender to the Department. The Department will not guarantee interest beyond this thirty (30) day period other than for the period of time it takes the Department to process the loss claim. Before approval by the Department of any final loss report, the Lender shall account for all funds during the period of liquidation, disposition of collateral, all costs incurred and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and report of loss, the Department may audit the account and will determine the final loss. The Lender shall make its records available to and otherwise assist the Department in making any audit. The documentation accompanying the report of loss shall support the final figures shown on Form DOR-LG-10.
- (a) A determination shall be made regarding the collectibility of unsecured personal and corporate guarantees. If reasonably possible, such guarantees shall be promptly collected or otherwise disposed of prior to the completion of the final loss report. However, in the event that collection from the guarantors appears unlikely or will require a prolonged period of time, the report of loss shall be filed when all other collateral has been liquidated, and unsecured or personal or corporate guarantees shall be treated as a future recovery with the net proceeds to be shared on a pro rata basis by the Lender and the Department.
- (b) The Lender shall document that all of the collateral has been accounted for and properly liquidated and that liquidation proceeds have been properly accounted for and applied correctly to the loan.
- (c) The Lender shall show a breakdown of any protective advance amount as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made.
- (d) The Lender shall show a breakdown of liquidation expenses as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made. Liquidation expenses are recoverable only from collateral proceeds. Attorney fees may be approved as liquidation expenses provided the fees are reasonable and cover legal issues pertaining to the liquidation that could not be properly handled by the Lender and its in-house counsel.

(e) Accrued interest shall be supported by documentation as to how the amount was accrued. If the interest rate was a variable rate, the Lender shall include documentation of changes in both the selected base rate and the loan rate.

(2) After the final report of loss has been approved:

(a) If the amount of the final loss is less than the guarantee limits set forth in the Loan Note Guarantee, the Department will pay the full amount of the final loss multiplied by the guarantee percentage to the Lender.

(b) If the amount of the final loss multiplied by the guarantee percentage is greater than the guarantee limits set forth in the Loan Note Guarantee, the Department will pay an amount up to such guarantee limits to the Lender.

(c) If the amount collected by the Lender through liquidation of the collateral is greater than the amount of the final loss, the Department will not be obligated to make a loan guarantee payment to the Lender.

(d) Examples of final loss payment calculations are provided in the Appendix to this Agreement.

(3) In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by the Department when the final report of loss is approved.

- M. Maximum amount of interest loss payment: Notwithstanding any other provisions of this agreement, the amount payable by the Department to the Lender cannot exceed the limits set forth in the Loan Note Guarantee. Loss occasioned by accruing interest will be covered to the extent of the guarantee to the date of final settlement provided the liquidation proceeds expeditiously with the liquidation plan approved by the Department.
- N. Application of Department Loss Payment: At the time of the final loss settlement the Lender shall notify the Borrower that the loss payment has been so applied. In all cases a Form DOR-LG-10, Guaranteed Loan Report of Loss, prepared and submitted by the Lender, will be processed by the Department.
- O. Income from Collateral: Any net rental or other income that has been received by the Lender from the collateral shall be applied on the guaranteed loan debt.
- P. Liquidation Costs: Certain reasonable liquidation costs shall be allowed during the liquidation process. A schedule of the liquidation costs shall be submitted as part of the liquidation plan. Such costs shall be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender to be protective advances. If changed circumstances after submission of the liquidation plan requires a revision of liquidation costs, the Lender shall obtain the Department's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender shall be allowed. In-house expenses include, but are not limited to, employee's salaries, staff lawyers, travel, and overhead.
- Q. Foreclosure: The Lender is responsible for determining who the necessary parties are to any foreclosure action or who should be named on a deed of conveyance taken in lieu of foreclosure. When the conveyance is received and the property is liquidated, the net proceeds shall be applied to the guaranteed loan debt.
- R. Payment: Such loss will be paid by the Department within sixty (60) days after the review of the accounting of collateral, in accordance with all applicable Department regulations.
- S. Protective Advances: Protective advances shall constitute an indebtedness of the Borrower to the Lender and be secured by the security instruments. The Department's written authorization is required for all protective advances in excess of \$5,000. Protective advances include but are not limited to advances made for property taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

- T. Future Recovery: After a loan has been liquidated and a final loss has been paid by the Department, any future funds which may be recovered by the Lender, will be prorated between the Department and the Lender. The Department will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender shall retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

VIII. Bankruptcy

- A. Lender's responsibilities: The Lender is responsible for protecting the guaranteed loan and all collateral securing the loan in bankruptcy proceedings, following standard commercial loan collection and collateral recovery practices. Losses following bankruptcy shall be reported on Form DOR-LG-10, Guaranteed Loan Report of Loss.
- B. Payment Application: The Lender shall apply final loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event the court attempts to direct the payments to be applied in a different manner, the Lender shall immediately notify the Department.

IX. Duration and Modification

- A. Duration of Agreement: This Lender's Agreement applies to all Beverage Container Recycling Infrastructure Loan Guarantee Program guaranteed loans made by the Lender from the date of this agreement until terminated or superceded by another Lender's Agreement.
- B. Modification of Agreement: This Agreement may be modified only in writing.
- C. Termination of Guarantee: A guarantee under this Agreement will terminate automatically:
- (1) Upon full payment of the guaranteed loan;
 - (2) Upon full payment of any loss obligation; or
 - (3) Upon written notice from the Lender to the Department that the guarantee will terminate thirty (30) days after the date of notice, provided that the Lender holds all of the guaranteed portion and the Loan Note Guarantee is returned to the Department to be cancelled.
- D. Other Requirements: This Agreement is subject to all applicable State and Federal laws and regulations, and all requirements within the applicable Forms and referenced documents.

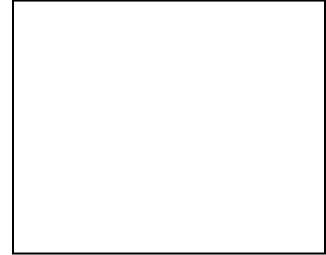
Part C - Signatures

Lender: Complete this block of Section X.

Lender: _____ (Name)

By: _____ (Signature)

_____ (Name typed or printed)



Title: _____

Date: _____

Attest: _____

Department: Complete this block of Section X.

California Department of Conservation
Division of Recycling

By: _____ (Signature)

_____ (Name typed or printed)

Title: _____

Date: _____

Appendix

Example Calculations -- Four Liquidation Scenarios

This appendix provides four liquidation settlement payment scenarios. These examples are provided to illustrate the intended calculations and approach that are specified in this agreement. The examples use standard loan interest and principal calculations based on monthly payments.

Example 1 – Lender's Agreement, Section VII, L(2)(a) – in this situation, the Department pays the Lender an amount equal to seventy-five (75) percent of the net loss. The total loan amount is \$400,000, thus the maximum guaranteed amount is \$300,000 (75 percent of the loan value). The interest rate is 7 percent, with a ten (10) year loan term. The loan defaults after 24 payments. The principal remaining at default (A), is shown below. The loan is determined to be in default after 90 days without payment, and another 90 days passes before the final loss settlement is made, thus, the interest accrued on the loan balance (B), is also part of the loss calculation. The total loss is reduced by the amount of collateral recovered (C), minus the approved cost of recovering the collateral (D). Thus, the net loss is equal to the total loss minus the net recovery, or, in this example, \$244,782.85. This amount is below the maximum guarantee amount of \$300,000. To calculate the actual payment to the Lender, the net loss is multiplied by the guarantee percentage (75 percent), resulting in a loan guarantee payment from the Department to the Lender of \$183,587.14.

Original Loan Amount	\$ 400,000.00	
Principal remaining at default	340,640.22	A
Interest accrued, 180 days	12,097.63	B
Total loss, before collateral	352,737.85	A+B
Collateral recovered	124,387.00	C
Approved cost of recovery	16,432.00	D
Net recovery	107,955.00	C-D
Net loss	244,782.85	(A+B)-(C-D)
75% of net loss	183,587.14	
Department Loss Payment	\$183,587.14	

Example 2 – Lender's Agreement, Section VII, L(2)(b) – in this situation, the Department pays the Lender the maximum guarantee, equal to seventy-five (75) percent of the loan amount. The total loan amount is \$1,500,000, thus the maximum guaranteed amount is \$1,125,000 (75 percent of the loan value). The interest rate is 7.8 percent, with a fifteen (15) year loan term. The loan defaults after 5 payments. The principal remaining at default (A), is shown below. The loan is determined to be in default after 90 days without payment, and another 120 days passes before the final loss settlement is made, thus, the interest accrued on the loan balance (B), is also part of the loss calculation. The total loss is reduced by the amount of collateral recovered (C), minus the cost of recovering the collateral (D). Thus, the net loss is equal to the total loss minus the net recovery, or, in this example, \$1,512,186.14. To calculate the payment to the Lender, the net loss is multiplied by the guarantee percentage (75 percent), equal to \$1,134,139.60. However, this amount is greater than the maximum guarantee amount, thus, the actual payment from the Department to the Lender is less than 75 percent of the net loss, and is equal to the maximum guarantee amount, \$1,125,000.

Original Loan Amount	\$ 1,500,000.00	
Principal remaining at default	1,477,650.69	A
Interest accrued, 210 days	68,558.45	B
Total loss, before collateral	1,546,209.14	A+B
Collateral recovered	52,455.00	C
Approved cost of recovery	18,432.00	D
Net recovery	34,023.00	C-D
Net loss	1,512,186.14	(A+B)-(C-D)
75% of net loss	1,134,139.60	
Department maximum payment	1,125,000.00	
Department Loss Payment	\$ 1,125,000.00	

Example 3 – Lender's Agreement, Section VII, L(2)(c) – in this situation, the Department does not make any payment to the Lender. The total loan amount is \$150,000, thus the maximum guaranteed amount is \$127,500 (85 percent of the loan value). The interest rate is 7.5 percent, with a ten (10) year loan term. The loan defaults after 33 payments. The principal remaining at default (A), is shown below. The loan is determined to be in default after 90 days without payment, and another 90 days passes before the final loss settlement is made, thus, the interest accrued on the loan balance (B), is also part of the loss calculation. The total loss is reduced by the amount of collateral recovered (C), minus the cost of recovering the collateral (D). In this example, the net collateral recovery is greater than the total loss before recovery, resulting in a net gain to the Lender of \$1,138.11. As a result, the Department does not make any loan guarantee payments to the Lender.

Original Loan Amount	\$ 150,000.00	
Principal remaining at default	119,209.73	A
Interest accrued, 180 days	3,772.16	B
Total loss, before collateral	122,981.89	A+B
Collateral recovered	136,675.00	C
Approved cost of recovery	12,555.00	D
Net recovery	124,120.00	C-D
Net loss	(1,138.11)	(A+B)-(C-D)
Department Loss Payment	\$0.00	

Example 4 – Lender's Agreement, Section VII, L(2)(a) and Section VII, L(3) – this example is similar to Example 1, with the addition of a protective advance. As with Example 1, the Department pays the Borrower an amount equal to seventy-five (75) percent of the net loss. The total loan amount is \$400,000, thus the maximum guaranteed amount is \$300,000 (75 percent of the loan value). The interest rate is 7 percent, with a ten (10) year loan term. The loan defaults after 24 payments. The principal remaining at default (A), is shown below. The loan is determined to be in default after 90 days without payment, and another 90 days passes before the final loss settlement is made, thus, the interest accrued on the loan balance (B), is also part of the loss calculation. In addition, the Lender made an authorized protective advance in order to secure collateral. The protective advance, \$6,000, plus the interest accrued at 7 percent for the 120 days between the advance and final loss settlement, \$141.23, a total of \$6,141.23 (E), are also part of the loss calculation. The total loss is reduced by the amount of collateral recovered (C), minus the cost of recovering the collateral (D). Thus, the net loss is equal to the total loss minus the net recovery, or, in this example, \$250,924.08. This amount is well below the maximum guarantee amount of \$300,000. To calculate the actual payment to the Lender, the net loss is multiplied by the guarantee percentage (75 percent), resulting in a loan guarantee payment from the Department to the Lender of \$188,193.06.

Original Loan Amount	\$ 400,000.00	
Principal remaining at default	340,640.22	A
Authorized protective advance	6,141.23	E
Interest accrued, 180 days	12,097.63	B
Total loss, before collateral	358,879.08	A+B+E
Collateral recovered	124,387.00	C
Approved cost of recovery	16,432.00	D
Net recovery	107,955.00	C-D
Net loss	250,924.08	(A+B+E)-(C-D)
75% of net loss	188,193.06	
Department Loss Payment	\$188,193.06	